

Chapter 17.162

PROCEDURES FOR DECISION MAKING--QUASI-JUDICIAL

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17.162.010 Purpose. The purpose of this chapter is to establish procedures for the consideration of development applications, for the consideration of quasi-judicial comprehensive plan or zoning amendments and for appeal of quasi-judicial decisions. (Ord. 634 §1 Exh. A (part), 1995)

17.162.020 Application process. A. The applicant shall be required to meet with the planner for a pre-application conference. Such a requirement may be waived in writing by the applicant.

B. The planner will invite city staff from other departments to provide technical expertise applicable to the proposal, as necessary, as well as other public agency staff.

C. At such conference, the planner shall:

1. Cite the applicable comprehensive plan policies and map designation;

2. Cite the applicable substantive and procedural ordinance provisions;

3. Provide available technical data and assistance which will aid the applicant as provided by the public works director;

4. Identify other policies and regulations that relate to the application; and

5. Identify other opportunities or constraints that relate to the application.

D. Another preapplication conference is required if an application is submitted six months after the preapplication conference.

E. Failure of the planner to provide any of the information required by this chapter shall not constitute a waiver of the standards, criteria or requirements of the applications. Neither the city nor the planner shall be liable for any incorrect information provided in the preapplication conferences.

F. Applications for approval required under this title may be initiated by:

1. Resolution of the city council;

2. Resolution of the planning commission;

3. The planner;

4. A recognized neighborhood planning organization or city advisory board or commission; or

5. Application of a record owner of property or contract purchaser.

G. Any persons authorized by this title to submit an application for approval may be represented by an agent authorized in writing to make the application.

H. The application shall be made on forms provided by the planner.

I. The application shall:

1. Include the information requested on the application form;

2. Address appropriate criteria in sufficient detail for review and action; and

3. Be accompanied by the required fee.

J. The planner may require information in addition to that required by a specific provision of this title, provided the planner determines this information is needed to properly evaluate the proposed development proposal; and the need can be justified on the basis of a special or unforeseen circumstance.

K. The planner may waive the submission of information for a specific requirement provided the planner finds that specific information is not necessary to properly evaluate the application; or the planner finds that a specific approval standard is not applicable to the application.

L. Where a requirement is found by the planner to be inapplicable, the planner shall:

1. Indicate for the record and to the applicant the specific requirements found inapplicable; and

2. Advise the applicant in writing that the finding may be challenged on appeal or at the hearing or decision on the matter and may be denied by the approval authority; and

3. Cite in the staff report on the application the specific requirements found inapplicable, the reasons therefor and the specific grant of authority.

M. An application shall be deemed incomplete unless it addresses each element required to be considered under applicable provisions of this title and the application form, unless that requirement has been found inapplicable by the planner. The planner shall not accept an incomplete application.

N. If an application is incomplete, the planner shall:

1. Notify the applicant within thirty days of receipt of the application of exactly what information is missing; and
2. Allow the applicant to submit the missing information.

O. The application shall be deemed complete when the missing information is provided and at that time the one hundred twenty-day time period shall begin to run for the purposes of satisfying state law.

P. If the applicant refuses to submit the missing information, the application shall be deemed incomplete on the thirty-first day after the planner first received the application and returned to the applicant.

Q. Referrals will be sent to interested agencies such as city departments, police department, fire district, school district, utility companies, and applicable city, county, and state agencies. Affected jurisdiction and agencies could include the Department of Environmental Quality, the Oregon Department of Transportation, and Columbia County Rider. (Ord. 634 91 Exh. A (part), 1995)

17.162.021 Consolidation of proceedings. A. Except as provided in subsection C of this section, whenever an applicant requests more than one approval and more than one approval authority is required to decide the applications, the proceedings shall be consolidated so that one approval authority shall decide all applications in one proceeding.

B. In such cases as stated in subsection A of this section, the hearings shall be held by the approval authority having original jurisdiction over one of the applications under Section 17.164.110, in the following order of preference: the council, the commission, or the planner.

C. Where there is a consolidation of proceedings:

1. The notice shall identify each action to be taken;
2. The decision on a plan map amendment shall precede the decision on the proposed zone change and other actions. Plan map amendments are not subject to the one hundred twenty-day decision making period prescribed by state law and such amendments may involve complex issues. Therefore, the planner shall not be required to consolidate a plan map amendment and a zone change or other permit applications requested unless the applicant requests the proceedings be consolidated and signs a waiver of the one hundred twenty-day time limit prescribed by state law for zone change and permit applications; and
3. Separate actions shall be taken on each application.

D. Consolidated Permit Procedure.

1. Use of the consolidated permit procedures described in this section shall be at the election of the applicant.

2. When the consolidated procedure is elected, application and fee requirements shall remain as provided by resolution approved by the council. If more than one permit is required by this title or other ordinance to be heard by the planning commission or city council, each such hearing shall be combined with any other permit also requiring such hearing. The standards applicable to each permit by this or any other ordinance shall be applied in the consolidated procedures to each application.

3. In a consolidated proceeding, the staff report and recommendation provided by the planner shall be consolidated into a single report.

4. All rules and ordinances of the city not in conflict with this section shall apply in a consolidated permit procedure. (Ord. 634 §1 Exh. A (part), 1995)

17.162.025 Noticing requirements. A. Notice of a pending quasi-judicial public hearing shall be given by the planner in the following manner:

1. At least twenty days prior to the scheduled hearing date, or if two or more hearings are scheduled, ten days prior to the first hearing, notice shall be sent by mail to:

a. The applicant and all owners or contract purchasers of record of the property which is the subject of the application;

b. All property owners of record or the most recent property tax assessment roll within three hundred feet of the property which is the subject of the notice plus any properties abutting proposed off-site improvements.

c. Any governmental agency or utility whose property, services or facilities may be affected by the decision. The reviewing City Staff shall determine the extent of notice to public agencies or utilities based on perceived interest or impact; noticed agencies may include:

- i. Columbia County Land Development Services;
- ii. Columbia County Road Department;
- iii. Oregon Department of Transportation (ODOT);
- iv. ODOT Rail Division;
- v. Portland & Western Railroad;
- vi. Scappoose Rural Fire Protection District;
- vii. Port of St. Helens;
- viii. Oregon Department of Aviation;
- ix. Scappoose School District;
- x. Columbia County Soil Conservation District;
- xi. Scappoose Drainage Improvement Company; or
- xii. Any other affected agencies as identified

by the planner;

d. Acknowledged neighborhood planning organizations, if active;

e. Any person who requests, in writing; and

f. The appellant and all parties to an appeal.

2. At least thirty-five days before the initial hearing on adoption of any proposal to amend the comprehensive plan map or zoning map, notice shall be sent to the Department of Land Conservation and Development;

3. Notice of a hearing on a proposed zone change for a manufactured home park shall be given to tenants of that manufactured home park at least twenty days but no more than forty days prior to the hearing; and

4. The planner shall cause an affidavit of mailing of notice to be filed and made a part of the administrative record.

B. For all quasi-judicial decisions requiring a public hearing, the applicant shall post signs provided by the planner displaying notice of the pending hearing at least fourteen days prior to the date of the hearing. One sign shall be required for each three hundred feet, or part thereof, of frontage of the subject property on any street. The content, design, size and location of the signs shall be as determined by the planner to assure that the information is legible from the public right-of-way. As a precondition to a hearing, the applicant shall file an affidavit of such posting with the planner no less than ten days prior to the hearing.

C. For all quasi-judicial decisions requiring a public hearing, at least ten days prior to the hearing, notice shall be given in a newspaper of general circulation in the city. An affidavit of publication shall be made part of the administrative record. (Ord. 828, 2013; Ord. 634 §1 Exh. A (part), 1995)

17.162.030 Contents of the notice for public hearings. Notice given to persons entitled to mailed or published notice pursuant to Section 17.162.025 shall include the following information:

A. A description of the subject property, the street address if available, and a general location which shall include tax map designations from the county assessor's office;

B. Except for notice published in the newspaper, a map showing the location of the property;

C. An explanation of the nature of the application and the proposed use or uses which could be authorized; D. The applicable criteria from the ordinances and comprehensive plan that apply to the application;

E. The time, place and date of the public hearing;

F. A statement that both public oral and written testimony is invited, a general explanation of the requirements for submission of evidence and the procedure for conduct of the hearing;

G. State that copies of all evidence relied upon by the applicant are available for review, and that copies can be obtained at cost;

H. A statement that all documents or evidence in the file are available for inspection at no cost, or copies at a reasonable cost;

I. A statement that a copy of the staff report will be available for inspection at no cost, or copies at reasonable cost, at least seven days prior to the hearing;

J. A statement that failure to raise an issue in the hearing or during the comment period, in person or by letter, or failure to provide sufficient specific detail to give the decision maker or hearing body an opportunity to respond to the issue, precludes appeal to the land use board of appeals on that issue. Issues shall be raised with sufficient specificity to enable the decision maker to respond to the issue. (Ord. 877, 2019; Ord. 634 §1 Exh. A (part), 1995)

17.162.040 Failure to receive notice. A. Where either the planning commission or council or both intend to hold more than one public hearing on the same application, notice of several public hearings before both approval authorities may be given in one notice.

B. The failure of a property owner to receive notice shall not invalidate the action provided a good faith attempt was made to notify all persons entitled to notice.

C. Personal notice is deemed given when the notice is deposited with the United States Postal Service.

D. Published notice is deemed given on the date it is published.

E. In computing the length of time that notice is given, the first date notice is given shall be excluded and the day of the hearing or the date on which the appeal period expires shall be included unless the last day falls on any legal holiday or on Saturday, in which case, the last day shall be the next business day.

F. The records of the Columbia County assessor's office shall be the official records used for giving notice required in this title, and a person's name and address which is not on file at the time the notice mailing list is initially prepared is not a person entitled to notice. (Ord. 634 §1 Exh. A (part), 1995)

17.162.050 Time period for decision making. The city shall take final action on an application for a permit, plan change or zone change, including the resolution of all appeals, within one hundred twenty days after the application is deemed complete, except:

A. The one hundred twenty-day period may be extended for a reasonable period of time at the request of the applicant;

B. The one hundred twenty-day period applies only to a decision wholly within the authority and control of the city; and

C. The one hundred twenty-day period does not apply to an amendment to an acknowledged comprehensive plan or land use regulation. (Ord. 634 §1 Exh. A (part), 1995)

17.162.090 Approval authority responsibilities. A. The planner shall have the authority to approve, deny or approve with conditions the following applications:

1. Interpretations subject to Section 17.01.050;

2. Determination of parking requirements for unlisted uses;

3. Determination of access, egress and circulation plan (not subject to planning commission approval) pursuant to public works design standards;

4. Sign, sign exception, and sign variance pursuant to Chapter 17.114;

5. Minor variance pursuant to Chapter 17.134;

6. Type I home occupation pursuant to Chapter 17.142;

7. Sensitive land permits (for applications not subject to planning commission approval) pursuant to Chapter 17.84, Chapter 17.85, Chapter 17.86, and Chapter 17.89; and

8. Public land tree removal not associated with timber harvesting and clearing from designated public recreation areas.

9. Type I Food cart pod permits, subject to Chapter 17.126.

B. The planner may refer any application for review to the planning commission.

C. The planning commission shall conduct a public hearing in the manner prescribed by this chapter and shall have the authority to approve, approve with conditions, approve with modifications or deny the following development applications:

1. Recommendations for applicable comprehensive plan and zoning district designations to city council for lands annexed to the city;

2. A quasi-judicial comprehensive plan map amendment except the planning commission's function shall be limited to a recommendation to the council. The commission may transmit its recommendation in any form and a final order need not be formally adopted;

3. A quasi-judicial zoning map amendment shall be decided in the same manner as a quasi-judicial plan amendment and is subject to 17.160.120(C);

4. Conditional use pursuant to Chapter 17.130;

5. Major variance pursuant to Chapter 17.134;

6. Sensitive land permits and variances pursuant to Chapter 17.84, Chapter 17.85, and Chapter 17.86 for applications requiring planning commission action;

7. Type II home occupation pursuant to Chapter 17.142;

8. Historic overlay district exterior alteration and new construction applications pursuant to Chapter 17.82;

9. Public land tree removal associated with timber harvesting and clearing from designated public recreation areas;

10. Authorization of Similar Use pursuant to Chapter 17.43;

11. Fence or fence/berm combination greater than eight feet in height;

12. Conceptual master plan or modification of conceptual master plan pursuant to Chapter 17.74;

13. Type II Food cart pod permits, subject to Chapter 17.126.

14. Appeal of a decision made by the planner; and

15. Any other matter not specifically assigned to the planner, or the city council under this title.

D. Upon appeal or recommendation, the city council shall conduct a public hearing in the manner prescribed by this chapter and shall have the authority to approve, deny or approve with conditions the following development applications:

1. Annexations and the formal imposition of plan and zone designations made to lands annexed to the city;

2. Quasi-judicial plan and zone amendments, including overlay zones;

3. Creation, modification or removal of a historic overlay designation or demolition of a historic site, structure or landmark pursuant to Chapter 17.82;

4. Matters referred to the council by the planning commission;

5. Review of decisions of the planning commission, whether on the council's own motion or otherwise. (Ord. 877, 2019; Ord. 857, 2016; Ord. 828, 2013; Ord. 820 §12, 2012; Ord. 817, 2011; Ord. 736 §1, 2003; Ord. 634 §1 Exh. A (part), 1995)

17.162.110 Decision by the planner--No hearing required. A. Pursuant to Section 17.162.090(A), the planner is authorized to make certain decisions, and no hearing shall be held unless:

1. An appeal is filed; or
2. The planner has an interest in the outcome of the decision, due to some past or present involvement with the applicant, other interested persons or in the property or surrounding property. In such cases, the application shall be treated as if it were filed under Section 17.162.090(C).

B. The decision shall be based on the approval criteria set forth in Section 17.162.140.

C. Notice of the decision by the planner shall be given as provided by Section 17.162.120 and notice shall be governed by the provisions of Section 17.162.030 and Section 17.162.040.

D. The record shall include:

1. A copy of the application and all supporting information, plans, exhibits, graphics, etc.;
2. All correspondence relating to the application;
3. All information considered by the planner in making the decision;
4. The staff report of the planner;
5. A list of the conditions, if any are attached to the approval of the application; and
6. A copy of the notice advising of the planner's decision, a list of all persons who were given mailed notice and accompanying affidavits.

E. Standing to appeal shall be as provided by Section 17.162.200.

F. The appeal period shall be computed as provided by Section 17.162.210.

G. The method for taking the appeal shall be as provided by Subsection 17.162.220(A) and the notice of appeal submitted by an appellant shall be as provided by Section 17.162.250.

H. The hearing on the appeal shall be confined to the prior record as provided in Section 17.162.300.

I. Notice of the final decision on appeal shall be as provided by Section 17.162.250 and Section 17.162.240.

J. No decision by the planner may be modified from that set out in the notice except upon being given new notice.

K. The action on the appeal shall be as provided by Section 17.162.360.

L. A decision by the commission on an appeal of a planner's decision may be appealed to the council.

M. Re-submittal shall be as provided by Section 17.162.150, Denial of Application: Re-submittal.

N. The provisions of Section 17.162.390, Revocation of Approvals apply to a decision by the Planner. (Ord. 634 §1 Exh. A (part), 1995)

17.162.120 Notice of decision by the planner. A. Notice of the planner's decision on an application pursuant to Section 17.162.090(A) shall be given by the planner in the following manner:

1. Within five days of signing the proposed decision, notice shall be sent by mail to:

- a. The applicant and all owners or contract purchasers of record of the property which is the subject of the application;
- b. All surrounding property owners or record of property within three hundred feet of the property for administrative variances and sensitive lands;
- c. All owners of record of property immediately abutting a site for home occupations and Type I food cart pods;
- d. The applicant for a planner's interpretation or a planner's decision regarding an extension of approval;
- e. The recognized neighborhood planning organization;
- f. Any governmental agency which is entitled to notice under an intergovernmental agreement entered into with the city which includes provision for such notice; and
- g. Any person who requests notice in writing.

B. The planner shall cause an affidavit of mailing to be filed and made a part of the administrative record.

C. Notice of a decision by the planner shall contain:

1. The nature of the application in sufficient detail to apprise persons entitled to notice of the applicant's proposal and of the decision;
2. The address and general location of the subject property;
3. A statement of where the adopted findings of fact, decision and statement of conditions can be obtained;
4. The date the planner's decision will become final;
5. A statement that a person entitled to notice or adversely affected or aggrieved by the decision may appeal the decision:
 - a. The statement shall explain briefly how an appeal can be made, the deadlines and where information can be obtained, and
 - b. The statement shall explain that if an appeal is not filed, the decision shall be final;
6. A map showing the location of the property (planner's interpretations are exempt from this requirement); and
7. A statement that the hearing on an appeal will be confined to the prior record. (Ord. 877, 2019; Ord. 828, 2013; Ord. 634 \$1 Exh. A (part), 1995)

17.162.130 Hearings procedure. A. Unless otherwise provided in this title or other ordinances adopted by council:

1. The presiding officer of the planning commission and of the council shall have the authority to:
 - a. Determine standing;
 - b. Regulate the course, sequence and decorum of the hearing;
 - c. Dispose of procedural requirements or similar matters;
 - d. Rule on offers of proof and relevancy of evidence and testimony;
 - e. Impose reasonable limitations on the number of witnesses heard and set reasonable time limits for oral presentation and rebuttal testimony; and
 - f. Take such other action appropriate for conduct commensurate with the nature of the hearing;

B. Unless otherwise provided in this title or other ordinances adopted by council, the presiding officer of the planning commission and of the council shall conduct the hearing as follows:

1. Opening statement: announce the nature and purpose of the hearing and summarize the rules of conducting the hearing, and if the proceeding is an initial evidentiary hearing before the planning commission or the city council, make a statement that:

- a. Lists the applicable substantive criteria;
- b. States that testimony and evidence must be directed toward the criteria described in subdivision (1) (a) of this subsection, or to the other criteria in the comprehensive plan or the title which they apply to the decision;
- c. States that failure to raise an issue with sufficient specificity to afford the decision-maker and the parties an opportunity to respond to the issue precludes appeal to the land use board of appeals on that issue.

2. Quasi-judicial hearing process:

- a. Recognize parties;
- b. Request the planner to present the staff report, to explain any graphic or pictorial displays which are a part of the report, summarize the findings, recommendations and conditions, if any, and to provide such other information as may be requested by the approval authority;
- c. Allow the applicant or a representative of the applicant to be heard;
- d. Allow parties or witnesses in favor of the applicant's proposal to be heard;
- e. Allow parties or witnesses in opposition to the applicant's proposal to be heard;
- f. Upon failure of any party to appear, the approval authority shall take into consideration written material submitted by such party;
- g. Allow the parties in favor of the proposal to offer rebuttal evidence and testimony limited to rebuttal of points raised.
- h. Make a decision pursuant to Section 17.162.140 or take the matter under advisement pursuant to Section 17.162.180.

C. Unless otherwise provided in this title or other ordinances adopted by the council, the following rules shall apply to the general conduct of the hearing:

1. The approval authority may ask questions at any time before the close of the hearing, and the answers shall be limited to the substance of the question;
2. Parties or the planner must receive approval from the approval authority to submit questions directly to other parties or witnesses or the planner;
3. A reasonable amount of time shall be given to persons to respond to questions;
4. No person shall testify without first receiving recognition from the approval authority and stating his full name and address;
5. The approval authority may require that testimony be under oath or affirmation;
6. Audience demonstrations such as applause, cheering and display of signs, or other conduct disruptive of the hearing shall not be permitted. Any such conduct may be cause for immediate suspension of the hearing or removal of persons responsible; and
7. No person shall be disorderly, abusive or disruptive of the orderly conduct of the hearing. (Ord. 634 §1 Exh. A (part), 1995)

17.162.140 Decision process. A. The decision shall be based on:

1. Proof by the applicant that the application fully complies with:

- a. Applicable policies of the city comprehensive plan; and

- b. The relevant approval standards found in the applicable chapter(s) of this title, the public works design standards, and other applicable implementing ordinances.

B. Consideration may also be given to:

1. Proof of a substantial change in circumstances or a mistake in the comprehensive plan or zoning map as it relates to the property which is the subject of the development application; and

2. Factual oral testimony or written statements from the parties, other persons and other governmental agencies relevant to the existing conditions, other applicable standards and criteria, possible negative or positive attributes of the proposal or factors in subsections (A) or (B) (1) of this section.

C. In all cases, the decision shall include a statement in a form addressing the planner's staff report.

D. The approval authority may:

1. Adopt findings and conclusions contained in the staff report;

2. Adopt findings and conclusions of a lower approval authority;

3. Adopt its own findings and conclusions;

4. Adopt findings and conclusions submitted by any party provided all parties have had an opportunity to review the findings and comment on the same; or

5. Adopt findings and conclusions from another source, either with or without modification, having made a tentative decision, and having directed staff to prepare findings for review and to provide an opportunity for all parties to comment on the same.

E. The decision may be for denial, approval or approval with conditions.

1. Conditions may be imposed where such conditions are necessary to:

- a. Carry out applicable provisions of the Scappoose comprehensive plan;

- b. Carry out the applicable implementing ordinances; and

- c. Ensure that adequate public services are provided to the development or to ensure that other required improvements are made;

2. Conditions may include, but are not limited to:

- a. Minimum lot sizes;

- b. Larger setbacks;

- c. Preservation of significant natural features;

- d. Dedication of easements; and

- e. Conveyances and dedications of property needed for public use.

3. Conditions of approval shall be fulfilled within the time limit set forth in the decision or, if no time limit is set forth, the conditions of approval shall be fulfilled within one year. Failure to fulfill any condition of approval within the time limitations provided may be grounds for revocation of approval, after notice and an opportunity to be heard as a quasi-judicial action;

4. Changes, alterations or amendments to the substance of the conditions of approval shall be processed as a new action;

5. Prior to the commencement of development, i.e., the issuance of any permits or the taking of any action under the approved development application, the owner and any contract purchasers of the property which is the subject of the approved application, may be required to sign and deliver to the planner their acknowledgment in a development agreement and consent to such conditions:

a. The city manager shall have the authority to execute the development agreement on behalf of the city,

b. No building permit shall be issued for the use covered by the application until the executed contract is recorded and filed in the county records, and

c. Such development agreement shall be enforceable against the signing parties, their heirs, successors and assigns by the city by appropriate action in law or suit in equity;

6. A bond in a form acceptable to the city or a cash deposit from the property owners or contract purchasers for the full amount as will ensure compliance with the conditions imposed pursuant to this subsection may be required. Such bond or deposit shall be posted prior to the issuance of a building permit for the use covered by the application.

F. The final decision on the application may grant less than all of the parcel which is the subject of the application.

G. If the planning commission fails to recommend approval, approval with modification, or denial of an application within sixty days of its first public hearing, the planner shall:

1. Report the failure to approve a recommendation to the council; and

2. Cause notice to be given, the matter to be placed on the council's agenda, a public hearing to be held and a decision to be made by the council. No further action shall be taken by the planning commission. (Ord. 634 §1 Exh. A (part), 1995)

17.162.150 Denial of the application--Re-submittal. An application which has been denied or an application which was denied and which on appeal has not been reversed by a higher authority, including the land use board of appeals, the land conservation and development commission or the courts, may not be resubmitted for the same or a substantially similar proposal or for the same or substantially similar action for a period of at least twelve months from the date the final city action is made denying the application unless there is a substantial change in the facts or a change in city policy which would change the outcome. (Ord. 634 §1 Exh. A (part), 1995)

17.162.160 Record may remain open--Admission of new evidence. A. Unless there is a continuance, the record shall remain open for new evidence for at least seven days at the request of any participant in the initial evidentiary hearing before the planning commission or the city council, if the request is made prior to the conclusion of the hearing.

B. When the record is left open to admit new evidence, testimony, or criteria for decision-making, any person may raise new issues which relate to that new material. (Ord. 634 §1 Exh. A (part), 1995)

17.162.170 Ex parte communications with approval authority. A. Members of the approval authority shall not:

1. Communicate, directly or indirectly, with any party or representative of a party in connection with any issue involved except upon giving notice and opportunity for all parties to participate; nor

2. Take notice of any communication, report or other materials outside the record prepared by the proponents or opponents in connection with the particular case unless the parties are afforded an opportunity to contest the material so noticed.

B. No decision or action of the planning commission or council shall be invalid due to an ex parte contact or bias resulting from an ex parte contact with a member of the decision-making body, if the member of the decision making body receiving the contact:

1. Places on the record the substance of any written or oral ex parte communications concerning the decision or action; and

2. Makes a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication made at the first hearing following the communication where action will be considered or taken on the subject to which the communication related.

C. Members of the planning commission shall be governed by the provisions of Oregon Revised Statute 227.035 and the provisions of this section.

D. This section shall not apply to planner decisions made under Section 17.162.090(A).

E. A communication between any city employee and the planning commission or council shall not be considered an ex parte contact. (Ord. 634 §1 Exh. A (part), 1995)

17.162.180 Continuation of the hearing. A. An approval authority may continue the hearing from time to time to gather additional evidence, to consider the application fully or to give notice to additional persons.

B. Unless otherwise provided by the approval authority, no additional notice need be given of a continued hearing if the matter is continued to a date, time and place certain. (Ord. 634 §1 Exh. A (part), 1995)

17.162.200 Evidence. A. All evidence offered and not objected to may be received unless excluded by the approval authority on its own motion.

B. Evidence received at any hearing shall be of a quality that reasonable persons rely upon in the conduct of their everyday affairs.

C. No person shall present irrelevant, immaterial or unduly repetitious testimony or evidence.

D. Evidence shall be received and notice may be taken of those facts in a manner similar to that provided for in contested cases before state administrative agencies pursuant to ORS 183.450, except as otherwise provided for in this title.

E. Formal rules of evidence, as used in courts of law, shall not apply. (Ord. 634 §1 Exh. A (part), 1995)

17.162.210 Judicial notice. A. The approval authority may take notice of the following:

1. All facts which are judicially noticeable. Such noticed facts shall be stated and made part of the record;

2. The Statewide Planning Goals and regulations adopted pursuant to Oregon Revised Statutes Chapter 197; and

3. The comprehensive plan and other officially adopted plans, implementing ordinances, rules and regulations of the city.

B. Matters judicially noticed need not be established by evidence and may be considered by the approval authority in the determination of the application. (Ord. 634 §1 Exh. A (part), 1995)

17.162.220 Participation in the decision--Voting. A. In addition to the provision of Oregon Revised Statute 227.035 which applies to planning commission members or Oregon Revised Statutes Chapter 244 which applies to all members of an approval authority, each member of the approval authority shall be impartial. Any member having any substantial past or present involvement with the applicant, other interested persons, the property or surrounding property, or having a financial interest in the outcome of the proceeding, or having any pre-hearing contacts, shall state for the record the nature of their involvement or contacts, and shall either:

1. State that they are not prejudiced by the involvement or contacts and will participate and vote on the matter; or

2. State that they are prejudiced by the involvement or contact and will withdraw from participation in the matter.

B. An affirmative vote by a majority of the qualified voting members of the approval authority who are present is required to approve, approve with conditions, or deny an application or to amend, modify, or reverse a decision on appeal.

C. Notwithstanding subsections A and B of this section, no member of an approval authority having a financial interest in the outcome of an application shall take part in proceedings on that application; provided, however, with respect to the council only, a member may vote upon a finding of necessity which shall be placed on the record by the presiding officer.

D. In an appeal, if there is a tie vote, the decision which is the subject of appeal shall stand. (Ord. 634 §1 Exh. A (part), 1995)

17.162.230 Record of proceeding for public hearings. A. A verbatim record of the proceeding shall be made by mechanical means (such as a tape recording), and:

1. It shall not be necessary to transcribe testimony except as provided for in Section 17.162.310.

2. The minutes or (if applicable) transcript of testimony, or other evidence of the proceedings, shall be part of the record.

B. All exhibits received shall be marked so as to provide identification upon review.

C. The record shall include:

1. All materials, pleadings, memoranda, stipulations and motions submitted by any party to the proceeding and recorded or considered by the approval authority as evidence;

2. All materials submitted by the planner to the approval authority with respect to the application including in the case of an appeal taken pursuant to Section 17.162.270, the record of the planner's decision as provided by Section 17.162.110;

3. The transcript of the hearing, if requested by the council or a party, or the minutes of the hearing, or other evidence of the proceedings before the approval authority;

4. The written findings, conclusions, decision and, if any, conditions of approval of the approval authority;

5. Argument by the parties or their legal representatives permitted in Section 17.162.300 at the time of review before the council;

6. All correspondence relating to the application; and

7. A copy of the notice which was given as provided by Section 17.162.030, accompanying affidavits and list of persons who were sent mailed notice. (Ord. 634 §1 Exh. A (part), 1995)

17.162.240 Form of the final decision. A. The final decision shall be a decision which is in writing and which has been signed by the planner.

B. The final decision shall be filed in the records of the planner within ten calendar days after the decision is made by the approval authority and notice thereof shall be mailed to the applicant and all parties in the action, and shall be available to the approval authority. (Ord. 634 §1 Exh. A (part), 1995)

17.162.250 Notice of final decision. A. Notice of a final decision shall briefly summarize the decision and contain:

1. A statement that all required notices under Section 17.162.025;

2. A statement of where the adopted findings of fact, decision and statement of conditions can be obtained;

3. The date the final decision was filed; and

4. A statement of whether a party to the proceeding may seek appeal of the decision, as appropriate, to wit:

a. In the case of a final decision by the council, the statement shall explain that this decision is final and how appeal may be heard by a higher authority; or

b. In the case of a final decision by the planning commission, the statement shall explain briefly how an appeal can be taken to the council pursuant to Section 17.162.290, the deadlines, and where information can be obtained.

B. Notice of the final decision by the planning commission or council shall be mailed to the applicant and to all the parties to the decision and shall be made available to the members of the council. (Ord. 634 §1 Exh. A (part), 1995)

17.162.260 Amending a decision by the planner. A. The planner may issue an amended decision after the notice of final decision has been issued and prior to the end of the ten-day appeal period.

B. A request for an amended decision shall be in writing and filed with the planner not more than eight days after the notice of final decision has been filed.

C. A request for an amended decision may be filed by:

1. The recognized neighborhood planning organization affected by the initial decision;

2. Resolution of the city council;

3. Resolution of the planning commission;

4. The planner;

5. Any party entitled to notice of the original decision;

or

6. Any party who submitted comments in writing on the original decision.

D. The amended decision process shall be limited to one time for each original application.

E. The planner shall make the determination as to issuance of an amended decision based on findings that one or more of the following conditions exist:

1. An error or omission was made on the original notice of final decision;

2. The original decision was based on incorrect information and incorrect information may only be considered in administrative actions before the planner;

3. New information becomes available during the appeal period which was not available when the decision was made which alters the facts or conditions in the original decision. New information may only be considered in administrative actions before the planner.

F. An amended decision shall be processed in accordance with Section 17.162.120 of this title. (Ord. 634 §1 Exh. A (part), 1995)

17.162.270 Standing to appeal. A. In the case of a decision by the planner, any person entitled to notice of the decision under this chapter, or any person who is adversely affected or aggrieved by the decision, may file a notice of appeal as provided by Section 17.162.320.

B. In the case of a decision by the planning commission, except for a decision on an appeal of the planner's decision, any person shall be considered a party to a matter, thus having standing to seek appeal, provided:

1. The person appeared before the planning commission orally or in writing:

a. The person was entitled as of right to notice and hearing prior to the decision to be reviewed; or

b. The person is aggrieved or has interests adversely affected by the decision. (Ord. 634 §1 Exh. A (part), 1995)

17.162.280 Computation of appeal period. A. The length of the appeal period shall be fifteen days from the date of mailing the notice of decision.

B. In computing the length of the appeal period, the day that notice of the decision is mailed shall be excluded and the last day for filing the appeal shall be included unless the last day falls on a legal holiday for the city or on a Saturday, in which case, the last day shall be the next business day. (Ord. 634 §1 Exh. A (part), 1995)

17.162.290 Determination of appropriate appeal body. A. All appeals of decisions or interpretations made by the planner may be appealed to the planning commission or pursuant to Section 17.162.090 except the council may, on its own motion, seek to hear the matter by voice vote prior to the effective date of the notice of the decision.

B. Any decision made by the planning commission under this chapter may be reviewed by the council by:

1. The filing of a notice of appeal as provided by Section 17.162.320, by any party to the decision by three thirty p.m. on the last day of the appeal period;

2. The council or planning commission, on its own motion, seeking appeal by voice vote prior to the end of the appeal period; or

3. Referral of a matter under Section 17.162.090 (D) by the initial hearings body to the council, upon closure of the hearing, when the case presents a policy issue which requires council deliberation and determination, in which case the council shall decide the application.

C. Failure to file an available appeal shall be deemed a failure to exhaust administrative remedies. The filing of available appeals is a condition precedent to appeal to the land use board of appeals. (Ord. 634 §1 Exh. A (part), 1995)

17.162.300 Type of appeal hearing--Limitations of appeal. A. The appeal of a decision made by the planner under Section 17.162.090(A) or Section 17.162.110, shall be confined to the prior record and conducted as if brought under Section 17.162.090(B) or (C).

B. The appeal of a decision of the planning commission to the council shall be:

1. Confined to the record of the proceedings unless council determines the admission of additional evidence is appropriate;

2. Limited to the grounds relied upon in the notice of appeal and the hearing shall be conducted in accordance with the provisions of this chapter.

C. The subject of written and oral argument. Such written argument shall be submitted not less than five days prior to council consideration; and

D. Reviews on the record by council of planning commission decisions shall be completed within forty days of when the notice of appeal is filed. (Ord. 634 §1 Exh. A (part), 1995)

17.162.310 Transcripts. A. The appellant shall be responsible to satisfy all costs incurred for preparation of the transcript. An estimated payment shall be made prior to the preparation of the transcript; any additional actual cost shall be paid prior to the hearing or if the actual cost is less than the estimate the remainder shall be returned.

B. Any party other than the appellant that requests a transcript shall be charged the actual copy costs. (Ord. 634 §1 Exh. A (part), 1995)

17.162.320 Notice of appeal. A. The notice of appeal shall be filed within the appeal period and contain:

1. A reference to the application sought to be appealed;
2. A statement of the petitioner's standing to the appeal;
3. The specific grounds for the appeal; and
4. The date of the final decision on the action or, in the case of a decision by the planner, the date the decision was filed;

B. The appeal application shall be accompanied by the required fee except as allowed under Section 17.162.330. (Ord. 634 §1 Exh. A (part), 1995)

17.162.330 Fee waivers. A. Fees for land use applications and appeals of a land use decision shall be waived for a recognized neighborhood planning organization (NPO) if all of the following conditions are met:

1. The appeal or land use application must have been supported by a majority vote of NPO members at a public meeting where a quorum of NPO members was present;

2. A copy of the minutes of the NPO meeting where the appeal or land use application was initiated must be submitted with the appeal or land use application;

3. The appeal or application will be considered valid when conditions (1) and (2) of this section are met and all other filing requirements are met; and

4. The NPO chairperson or designated representative shall appear at the next available city council meeting after the application or appeal is filed to request a waiver. The NPO shall work through the Planning Division to schedule the item on a council agenda.

B. Council may, on its own motion, waive the land use application or appeal fee for other nonprofit organizations. (Ord. 791 §3, 2007; Ord. 634 §1 Exh. A (part), 1995)

17.162.340 Persons entitled to notice of appeal--Type of notice. Upon appeal, notice shall be given to parties entitled to notice under Sections 17.162.025 and 17.162.270. (Ord. 634 §1 Exh. A (part), 1995)

17.162.350 Contents of notice of appeal. Notice shall include those matters provided by Section 17.162.030. (Ord. 634 §1 Exh. A (part), 1995)

17.162.360 Action on appeal. A. The appellate authority shall affirm, reverse or modify the decision which is the subject of the appeal; however, the decision shall be made in accordance with the provisions of Section 17.162.140; or

B. Upon the written consent of all parties to extend the one hundred twenty-day limit, the appellate authority may remand the matter if it is satisfied that testimony or other evidence could not have been presented or was not available at the time of the initial hearing. In deciding to remand the matter, the appellate authority shall consider and make findings and conclusions regarding:

1. The prejudice to parties,
2. The convenience or availability of evidence at the time of the initial hearing,
3. The surprise to opposing parties,
4. The date notice was given to other parties as to an attempt to admit, or
5. The competency, relevancy and materiality of the proposed testimony or other evidence. (Ord. 634 §1 Exh. A (part), 1995)

17.162.380 Effective date of final action. A. Within ten days of the filing of the final order of council, the planner shall give notice of the final order to all parties to the proceeding, informing them of the date of filing, the decision rendered, and where a copy may be found.

B. Action by the appellate authority on appeal shall be final and effective on the day of mailing notice of the final order. (Ord. 634 §1 Exh. A (part), 1995)

17.162.390 Revocation of approvals. A. The hearings authority may, after a hearing conducted pursuant to this chapter, modify or revoke any approval granted pursuant to this chapter for any of the following reasons:

1. A material misrepresentation or mistake of fact made by the applicant in the application or in testimony and evidence submitted, whether such misrepresentation be intentional or unintentional;

2. A failure to comply with the terms and conditions of approval;

3. A failure to use the premises in accordance with the terms of the approval; or

4. A material misrepresentation or mistake of fact or policy by the city in the written or oral report regarding the matter whether such misrepresentation be intentional or unintentional.

B. In the case of a decision made by the planner, the hearing on whether to modify or revoke an approval shall be held by the planning commission.

C. A petition for appeal of a revocation or modification may be filed in the same manner as provided by Section 17.162.290. (Ord. 634 §1 Exh. A (part), 1995)